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MAY 15 1945
CHARLES ELMORE CROPLEY
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1270

JOHN J. SPRIGGS,

Petitioner,

vs.

THE STATE BOARD OF LAW EXAMINERS

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF WYOMING AND BRIEF IN SUPPORT THEREOF.

JOHN J. SPRIGGS,
Pro Se.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1270

JOHN J. SPRIGGS,
Petitioner and Respondent Below,

vs.

THE STATE BOARD OF LAW EXAMINERS
Respondent and Complainant Below

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF WYOMING

To the Honorable, the Supreme Court of the United States:

Your Petitioner respectfully shows:

Summary Statement of Matters Involved

This action was brought in the District Court of Fremont County, Wyoming, on June 11, 1943, entitled, The State Board of Law Examiners, Complainant, vs. John J. Spriggs, Respondent. The respondent had been since 1908 a resident of said county and a duly licensed and practicing attorney in all the courts of Wyoming since that date.

There was no allegation in the complaint as to the creation, existence or membership of Complainant board, and

no evidence was offered at the trial, and they did not appear at the trial.

The complaint charged that in July 1942, respondent prepared and circulated among citizens of Wyoming a mimeographed circular letter containing false and defamatory statements concerning the Supreme Court of Wyoming, which statements were designed to bring said court into disrepute with the citizens of the State. To support the charge and as the basis for the complaint, the letter complained of was marked Ex. "A" attached to and made a part of the complaint.

The complaint further alleged that the acts of respondent in so preparing and circulating the mimeographed letter constitute unprofessional conduct on the part of respondent and legal cause for his disbarment or suspension as a member of the legal profession, or such other disciplinary action as to the court may seem proper. The complaint prayed that a hearing be had on the charges and accusation, and that if respondent be found guilty of the matters and things therein charged, he be dealt with as the law directs. The Complaint was signed as follows: "State Board of Law Examiners, by C. A. Zaring, President. Attest: L. C. Sampson, Secretary," and was verified by Louis J. O'Marr, Attorney General of Wyoming. (For Complaint and letter R. 1-8.)

Respondent moved for an order requiring complainant to state what particular portions of the letter were false or defamatory (R. 8-9-10). The motion was denied (R. 11).

Respondent then filed a demurrer stating seven grounds, as follows (R. 12): 1. No cause of action is stated; 2. No professional conduct is set forth; 3. The complaint shows on its face it is a privileged political letter; 4. The court is without jurisdiction to control, censure, suppress or penalize political thought and action; 5. The action is an attempt to

abuse the process of the court to censure, control, suppress, and penalize freedom to think, freedom of opinion, and freedom of speech; 6. The complaint is too indefinite and uncertain and fails to inform respondent as to what statements are false and defamatory; 7. There is further a lack of jurisdiction because there are no stated complainants with their alleged capacity to exist and sue set forth, save under the assumption that such a legal board exists with proper membership.

The demurrer was argued (Trans. 5, R. 78-9) but no ruling given other than the result of the final judgment.

Respondent filed an answer and again included the demurrer therein (Ans. VIII, R. 17-8) and defended the letter by answer and throughout the trial in both the lower and supreme court on grounds that may be briefly summarized as follows:

1. The court has no jurisdiction of the subject matter, and the action is an abuse of judicial process, in that, the letter is a sacred constitutionally privileged political communication, in the nature of a political platform, circulated by respondent in his capacity of candidate for supreme court justice of Wyoming in the 1942 political campaign, and the court has no jurisdiction or power to control, censure, suppress, or penalize political thought or action (Ans. par. VIII-IX, R. 17-8-9).

2. The letter was freedom of speech, and as such protected under the First Amendment to the Constitution of the United States and also under Sec. 20 Art. I of the Wyoming Constitution (See Ans. par. VIII, R. 17; See objection par. IV, R. 120).

3. That the letter criticised two past concluded decisions of the Wyoming Supreme Court, the first 7 paragraphs of the letter referring to a decision of that court rendered

Oct. 1936, and reported 50 Wyo. 277. Par. 12 of the letter referred to another past concluded court decision of that court rendered Jan. 1940, reported at 55 Wyo. 169, the only reference being that they sat therein while a petition was on file with the Governor asking an investigation. The state introduced the petition to investigate (Ex. 2, R. 80). That in both proceedings petitioner was litigant, and attorney for his co-litigant (see par. V, VIII, XIII answer, R. 15-17-23). His property rights were involved, as well as his rights as citizen, and attorney.

4. That the letter referred to past concluded court decisions and involved public men and measures. That his opponent was Chief Justice Riner, who was a candidate for re-election running on his record and the record of the court over which he presided. That the matters involved were of public interest and concern in the political campaign and was Freedom of Speech—the exercise of the natural attributes and inherent prerogatives of American citizenship (Par. VII ans., R. 17).

5. That the letter was the act of respondent in his private capacity as an American citizen and as candidate for public office in a political campaign, and involved no matter of professional conduct, or matter violative of his oath as attorney or of violation of his duties as attorney (See ans. par. VIII, R. 17).

6. That the letter expressed the private legal political opinion of respondent on past concluded court judgments and was comment on public men and measure, matters of public interest in the political campaign. That the letter as such opinion was true in fact and truth and was in harmony with and supported by the decisions of the Supreme Court of the United States, the federal courts, and different

state supreme courts (Par. IX ans., R. 18 and Transcript pp. 15-21) but it was immaterial whether the opinion was right or wrong, it was the opinion of respondent, expressed under these circumstances, and as such it was freedom of speech (See answer, R. 28 Par. XV, See objections, (R. 120-5).

7. That respondent by reason of his status as attorney had not surrendered any of his constitutional rights nor forfeited any of his inherent prerogatives or natural attributes of American citizenship. But that in the exercise thereof he stood on an equality with the mechanic, merchant, businessman, laborer and all other citizens whomsoever before the law, and could not be subjected to any different procedure or punishment for any alleged abuse of freedom of speech than applied to all other citizens. And that Sec. 20, Art. I of the Wyoming constitution guaranteed to respondent on an equality with all other citizens a jury trial, with TRUTH as justification, for any alleged abuse of freedom of speech (R. Par. VII, Ans. 17, Par. XXXI, Ans. 54).

8. That the action was a denial of the equal protection of the constitutional right to freedom of speech, under both the United States, and the Wyoming constitutions, and to a jury trial, with TRUTH as justification as guaranteed by Sec. 20, Art. I, Wyoming Constitution. And that respondent was discriminated against in the action and denied the equal protection of the law, a right guaranteed him by the Fourteenth Amendment to the constitution of the United States. And that by denying him such equal protection of the law, and compelling him to submit his rights, freedom, civil and political liberties, and his welfare and destiny to the very judge and court he had criticised in his letter was a proposition—TOO MONSTROUS TO BE CONSIDERED

FOR A MOMENT UNDER OUR PRESENT SYSTEM, and inhibited by the natural dictates of common justice under the American system of jurisprudence, and repugnant to the American concept of justice, with a fair and impartial trial. (See answer R. 20, Par. X, Asn. See objections R. 120-7.)

9. The respondent demanded a jury trial (R. 57-79) and a jury trial was denied (R. 5, Trans. 79). At the trial the respondent offered in evidence newspapers to support the truth of Par. 3 of the letter (R. 110-114, 31-4 Trans.) but the truth was excluded (R. 112, Tran.) and he set up in his answer and offered authorities from the Supreme Court of the United States, the Federal courts, and different State Supreme Courts to support his legal opinion as set forth in Par. 2 of the letter but these were disregarded and the court decreed that it was immaterial whether respondent was right or wrong, and that it was immaterial if the Wyoming Supreme Court was wrong. (See opinion R. 138.)

10. The Wyoming Supreme Court made an order calling in three District Judges, Ilsley, Metz and Thompson to sit as a supreme court, Judge Ilsley being the same judge who sat as a Supreme Court judge and rendered the opinion in 50 Wyo. 277 which the letter criticised. The order was without notice. (R. 115.) Respondent filed objection (R. 115), but they were denied. (128)

11. The lower court in its findings and recommendations found the letter was circulated as a campaign communication as a candidate for supreme court justice in the 1942 election, and that the same was unprofessional conduct and a violation of the respondent's oath as attorney, and recommended his suspension for a period of 2 years. (R. 69, Recommendations Approved 142.

12. Respondent filed objections thereto in the Supreme Court. He contended the letter was the exercise of the natural attributes and inherent prerogatives of his American citizenship, as was freedom of speech guaranteed him by the First Amendment to the constitution of the United States and also by Sec. 20, Art. I of the Wyoming constitution; that he was entitled to a jury trial; that the court was without jurisdiction, and the action was an abuse of judicial process as an attempt to censure, suppress and penalize political thought and action; that compelling him to submit his case, his right and welfare to the three district judges, among which was the same judge who had rendered the opinion criticised; and denying him the equal protection of the law in the conduct of the trial denied him due process of law as guaranteed by the Fourteenth Amendment to the constitution of the United States was contrary to proper and orderly judicial procedure and violated the American concept to a fair and impartial trial. (See objections R. 120-7.)

13. The Wyoming Supreme Court adopted the findings and recommendations of the court below, with the exception that the term of suspension was reduced to 6 months. It adjudged all contentions against respondent. Adjudged him guilty of unprofessional conduct, and that he had violated his oath and duties as an attorney by the letter; that it was not freedom of speech and privileged under either the First Amendment to the Constitution of the United States, or Sec. 20, Art. I of the Wyoming constitution; that he was not entitled to a jury trial; that the letter was false and defamatory; that it was immaterial if the Supreme Court had been right or wrong in its opinion so criticised, the respondent was guilty of unprofessional conduct, and entered its judgment (R. 142 Judgment) suspend-

ing him from practice of law for 6 months thereafter. (See also opinion 155 Pac. 2nd 285.)

The court further held that the action was correctly brought under Ch. 9, Sec. 9-116 Wyo. R. S. 1931 as amended by Ch. 112, Wyo. S. L. 1937 excluding a jury; and that the action was within the meaning and spirit of Sec. 9-114 Wyo. R. S. 1931, and that the court had jurisdiction of the case as so brought.

No petition for rehearing was filed. The court entered its judgment suspending respondent from the practice of law in all the courts of Wyoming for 6 months from and after Jan. 23, 1945 (R. 142 Judgment) and the judgment became, was and is final from Jan. 23, 1945.

II

Statement of Jurisdiction of the Court

1. The jurisdiction of this court is based upon the Judicial Code of the U. S., Sec. 237 B as amended by Act of Feb. 13, 1925, now 28 U. S. C. A. Sec. 344.

The opinion is reported in 155 Pac. 2nd 285. R. 130-142. The final judgment of the Wyoming Supreme Court so finding respondent guilty of unprofessional conduct, and such as constituted a violation of his oath as such attorney, and further that the letter was false and defamatory of the court, and further suspending him from the practice of law in all the courts of Wyoming for 6 months from and after Jan. 23, 1945, (R. 128 Judgment opinion 130-142) were and are final in character.

On the 2nd day of April 1945, Petitioner filed in this court his petition for an extension of time within which to file petition for writ of certiorari and supporting brief and on April 2nd, 1945, Associate Justice Wiley Rutledge of this court made an order granting said last mentioned petition

and extended the time for filing this petition for writ of certiorari to and including May 15, 1945 (R. 142).

Questions Presented

The questions presented by this petition for writ of certiorari are:

GROUP 1

1. Was the letter complained of in the action a constitutionally privileged political communication, and as such was it FREEDOM OF SPEECH and privileged as such under the First Amendment to the Constitution of the United States?

2. Was the letter complained of in the action a constitutionally privileged political communication, and as such was it FREEDOM OF SPEECH and privileged as such under Section 20 of Art. I of the Wyoming constitution; and was respondent entitled to a jury trial, and the right to justify by the TRUTH for the alleged abuse of the right of FREEDOM OF SPEECH charged in the complaint, as guaranteed by said Sec. 20, Art. I, of the Wyoming constitution?

3. Was the letter complained of in the action the exercise by respondent of FREEDOM OF SPEECH, such as constitutes the exercise of the natural attributes and inherent prerogatives of American citizenship, within the meaning, scope and protection of the privilege guaranteed by the First Amendment to the Constitution of the United States and also by Sec. 20, Art. I, of the Wyoming Constitution? And further was respondent entitled to a jury trial, with the right to justify by TRUTH, the alleged abuse of such Freedom of Speech guaranteed by said section of the Wyoming Constitution?

The Wyoming Supreme Court answered all three questions in the negative. Respondent in that court contended in the court below, and now in this Court, that the campaign

letter was such FREEDOM OF SPEECH and was so constitutionally privileged, and that the judgment of the Wyoming Supreme Court conflicts with such constitutional provisions and should be vacated by this Court.

Your petitioner herein contends that this Court has construed those constitutional guaranties repeatedly in conformity with the contentions of petitioner and contrary to the judgment of the Wyoming Supreme Court. On June 12, 1944, in *Baumgartner* v. *U. S.*, 64 Sup. Ct. Rep. 1245, this court says:

> "One of the prerogatives of American citizenship is the right to criticise public men and measures—and that means not only informed and responsible criticism, but the freedom to speak foolishly and without moderation."

And on the same day in *Hartzel* v. *U. S.*, 64 Sup. Ct. Rep. 1238, this Court says:

> "An American citizen has a right to discuss these matters, either by temperate reasoning, or immoderate and vicious invective, without running afoul the Espionage Act."

Petitioner contends these pronouncements of this Court determine all these questions in favor of petitioner and against the judgment of the Wyoming court, rendering the latter judgment wrong and void. For if these constitutional guaranties are good enough to protect the exercise of the natural attributes and inherent prerogatives of American citizenship by those accused of disloyalty to the government in time of war, all the more certain are they to protect an honorable American citizen, though he be an attorney, in performing a faithful, valuable, necessary public service in exposing judicial errors in past concluded court decisions in a political campaign, especially when that

criticism is sustained as informed by the law as declared by the Supreme Court of the United States, the Federal Courts and different State Supreme Courts.

Petitioner contends that this court has repeatedly determined that FREEDOM OF SPEECH is equally protected in criticism of past concluded court decisions. In *Paterson* v. *Colorado,* 205 U. S. 454, this Court says:

> "When a case is finished, courts are subject to the same criticism as other people."

Citing *U. S.* v. *Cruikshank,* 92 U. S. 542, that these rights are the natural attributes of national citizenship and protected by the First Amendment to the Constitution of the United States; and further, that a judgment of a court impairing these rights violates the rights of Citizens of the United States in violation of the Fourteenth Amendment to the Constitution of the United States.

And in *Craig v. Hecht,* 263 U. S. 255, Judge Taft says:

> "It is of primary importance that the right to freely comment on and criticise the actions and opinions and judgments of courts and judges *should be preserved inviolate.*
>
> "If the publication criticises the judge or court, after the matter with which the criticism has to do has been fully adjudicated, and the proceedings are ended so that the carrying out of the court's judgment cannot be thereby obstructed, the publication is not contempt and cannot be summarily punished by the court however false, malicious or unjust it may be. The remedy of the judge, as an individual, is by action or prosecution for libel."

And further *Re Pryor,* 18 Kan. 72, 26 Am. Rep. 747, says:

> "After a case is disposed of, a court or judge has no power to compel the public, or any individual thereof, *attorney or otherwise,* to consider his ruling

correct, his conduct proper, or even his integrity free from stain, or to punish for contempt any mere criticism or animadversion thereon no matter how severe or unjust."

The campaign letter herein criticised two past concluded decisions of the Wyoming Supreme Court. The first 7 paragraphs of the letter referred to the court's decision in *Tibbals & Spriggs* v. *Graham*, reported at 50 Wyo. 277, in Oct. 1936; and paragraph 12 of the letter referred to the decision of that court in *Tibbals & Spriggs* v. *Graham*, at 55 Wyo. 169, rendered Jan. 1940. (par. XVII ans.) R. 29.

There was no attack on the private lives of the judges. There was no allegation of any attempt to influence the action of the court on any pending matter, and no such evidence because it would not be true.

GROUP 2

4. Does the judgment of the Wyoming Supreme Court so rendered in the case on Jan. 23, 1945, finding respondent guilty of unprofessional conduct, and adjudging that conduct to be a violation of the oath of respondent as an attorney, and suspending him from the practice of law for a period of 6 months thereafter, constitute a denial of equal justice to respondent, and a denial to his constitutional right of FREEDOM OF SPEECH under the First Amendment to the constitution of the United States, and also under Sec. 20, Art. I of the Wyoming constitution, with a denial of right to a jury trial, and the right to justify by TRUTH under said Wyoming constitution, so as to further constitute a denial to the equal protection of and due process of law as guaranteed by the Fourteenth Amendment to the constitution of the United States, and if so, is the Wyoming judgment void?

5. Was the refusal of the Wyoming Court to admit in evidence newspaper reports of the decision of the Wyoming court in 50 Wyo. 277, offered in support of paragraph 3 of the letter (R. p. 31-4 Trans.) to establish TRUTH; and the action of that court in disregarding the universally harmonious decisions of the United States Supreme Court, and of the Federal Courts, and of different State Supreme Courts, set up and offered by respondent in support of the correctness of his legal opinion set forth in paragraph 2 of the campaign letter in conflict with Sec. 20 Art. I Wyo. constitution, and a denial of equal justice, and to due process of law as guaranteed by the Fourteenth Amendment to the constitution of the United States, and also said section of the Wyoming constitution, rendering the Wyoming judgment void?

> Sec. 20 Art. I Wyoming Constitution provides: "Free Speech—libel—Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right. And in all trials for libel, both civil and criminal the truth when published with good intent and for justifiable ends, shall be a defense, the jury having the right to determine the facts and the law, under direction of the court."
>
> Sec. 3 Art. I, Wyoming Constitution provides; "Equal Political Rights—Since equality in the enjoyment of natural and civil rights is made sure only through political equality, the laws of this state affecting the political rights and priviliges of its citizens shall be without distinction of race, color, sex, or any circumstance or condition whatsoever other than individual incompetency or unworthiness duly ascertained by a court of competent jurisdiction."

Petitioner contends the Wyoming Supreme court in its judgment herein answered the above questions in the negative, and further contends such decision violates his rights

guaranteed by Sec. 20 Art. I Wyoming constitution, and also under both the First and Fourteenth Amendments to the constitution of the United States thereby denying him equal justice and due process of law, by reason of which the Wyoming judgment is void.

The Wyoming Supreme Court is the creature of the Wyoming constitution. It is required by oath to uphold that constitution, including Sec. 20 Art. I, but the effect of its decision herein is to disregard that section, and to re-write it along these lines, towit;

> "Every person—(save an attorney)—may freely speak, write and publish on all subjects—(save and except that an attorney opposing the chief justice running for re-election on his record and the record of the court, may not expose the judicial errors of the judge or court on past concluded decisions. But the chief justice may criticise without restriction, the opposing attorney candidate. If the chief justice abuses his freedom of speech he shall be proceeded against by libel, with a jury trial, and TRUTH as defense, and respond in damages. But the attorney candidate, if he abuses freedom of speech, he shall be denied a jury trial and denied TRUTH as justification, and shall be tried by identical judge he criticised. It matters not that both took the same identical attorney's oath, yet for the same acts, the attorney chief justice shall not violate his oath, but the attorney candidate shall violate his oath and be deprived of his livelihood.)—

The action of the Wyoming court in denying petitioner a jury trial, and in excluding the TRUTH, the newspaper reports to support paragraph 3 of the letter (R. p. 111-4 Trans.) and in disregarding the universally harmonious decisions cited to sustain the correctness of paragraph 2 of the letter (Par. XVII Ans. R. 29 and Seq.; Par. XIX Ans. R. 33 and Seq.), was a denial of equal justice and in conflict with the freedom of speech and jury trial rights of

Sec. 20 Art. I Wyoming constitution, and of the First Amendment to the constitution and violated his rights to due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

The petitioner plead TRUTH of the letter (R. par. IV R. 14—R. 27 ans.) and he offered the TRUTH in evidence (R. 111-4) and he urged these contentions in the Supreme Court (R. 130. See objections R. 120-4).

The Supreme Court, in the 3rd paragraph of its opinion (155 Pac. 2nd 286) states that the defense is based on 5 grounds, but omits that petitioner urged the TRUTH as a defense. On page 288, the court quotes paragraphs of the letter basing its decision on this paragraph along with others, thereby considering the statement but denying proof of its truth (R. 134). Again on page 290 (R. 138), in the last paragraph in column 1 of the page the court says: "Even if the court had erred in its decision, as contended by the respondent, that would not have justified the respondent in going to the extremes he did in this article" from which it is apparent the court totally disregarded the TRUTH of the statements.

The decision then cites a case from California and one from Utah, and in each of those cases the court therein took up the statements complained of, applied them to the facts and law of the case, and pointed out wherein there could be no legal justification, in truth, fact, or law. But THIS COURT failed to state the facts of the record which supported the truth of this petitioner's statements, or to refer to the decisions which supported the correctness of his legal opinion in paragraph 2 of the letter. Then in the next to the last paragraph of its decision—page 292 (R. 141)—it says;

> "His charges of ignorance, prejudice, bias, gross incompetency against the Supreme Court is in our minds, wilful, malicious, and UNTRUTHFUL, and made with the intention of bringing the court into disrepute."

Petitioner by motions asked to have set out what portions were false (R. 9) and the court denied the request (R. 11). Then petitioner propounded the interrogatory to complainants requesting the same information (R. 56) and in their answers (R. 58), they could not comply. He set it up in par. IV of his objections in the Supreme Court (R. 121) but that court did not state one fact, or point any court decision against the legal opinion in par. 2 of the letter, altho it quotes that paragraph as ground for its judgment (page 288, R. 134 of opinion), all of which petitioner contends calls for an affirmative answer by this Court to questions 4 and 5 in GROUP 2, requiring a vacation of the Wyoming court judgment, because truth is made a crime instead of a virtue.

GROUP 3

6. Was the decision of the Wyoming Supreme Court herein, construing the constitutional right of this petitioner to FREEDOM OF SPEECH under the First Amendment of the U. S. constitution, and his right to due process of law under the Fourteenth Amendment of that constitution so out of harmony with and in conflict with the decisions of the Supreme Court of the United States construing those same constitutional provisions as to make the decision herein a denial of equal justice and the equal protection of the law and to due process of law rendering the Wyoming decision void?

7. Did the conduct of the Wyoming court herein denying respondent a jury trial, and the right to justify by truth his campaign letter, coupled with the further conduct of that court in compelling petitioner to submit his case, his constitutional rights, his welfare, security and destiny to Judge Ilsley, the same identical judge who sat in 50 Wyo. 277, as a supreme court and rendering the opinion therein which was criticised in the campaign letter, constitute such

a departure from the orderly procedure assured by the dictates of common and natural justice, as well as from Sec. 20 Art. I Wyoming constitution, and did that conduct so offend and contravene and violate the American concept of the constitutional right of petitioner to a fair and impartial trial, that it forth the supervisory power of this court to vacate said judgment as void, and accord petitioner a fair impartial trial as guaranteed by the 14th Amendment to the U. S. constitution, and as required by the dictates of common and natural justice rendering the judgment void, and requiring reversal by this court?

8. Does said judgment violate Petitioner's constitutional rights under Sec 3 and Sec 37 Art I of the Wyoming Constitution, further denying him due process of law as guaranteed by the 14th Amendment to the U S Constitution?

> Sec 37 Art. I Wyo Const provides; "Supreme Law—What is? The State of Wyoming is an inseparable part of the federal union, and the constitution of the United States is the Supreme Law of the land".

The Supreme Court of Wyoming, in *Hudson Oil Co.* v. *Bd. of Commrs.* 105 Pac 2nd 286 acknowledges the duty of the Wyoming courts to follow the interpretation of the U S constitution as placed thereon by the U S Supreme Court. But in the case herein it failed to accord Petitioner that right. It failed to protect his freedom of speech as that freedom of speech is guaranteed in the natural attributes and inherent prerogatives of American citizenship and by the U S Constitution and the decisions of this court construing those rights.

Sec 3 Art I Wyo constitution guaranteed Petitioner equal political rights and these were denied him. He is denied freedom of speech in a political campaign. He is threatened with punishment if he exercises those rights in the future. In

par. 12 of their opinion—R. 138, page 290—of 155 Pac. 2nd the court quotes the concluding paragraph of the campaign letter, and denounces Petitioner for asking an invitation to place the official files and records of the court before bar association, law schools so that they can analyze the records and form their own honest judgment thereon. And further it denounces Petitioner for exercising the right to petition the legislature with Tibbals. What punishment would it mete out to Tibbals for the same conduct? Is it equality? And there is threat of future punishment if the right of petition be exercised, or if he solicits an invitation from bar associations and law schools to present the official records of the court for their judgment.

For the same conduct, Petitioner is denied a jury trial that other citizens may have. And the conduct of Judge Ilsley sitting on his own case vitiates the Wyoming judgment, and is a denial of due process of law. Cooley on Constitutional Lim. pg. 592 says;

> "No one ought to be a judge of his own case. And so inflexible and manifestly just that Lord Coke has laid it down that—"even an Act of Parliament made against natural equity as to make a man a judge of his own case IS VOID OF ITSELF."

Petitioner in his objection to the Supreme Court order calling in these district judges (R. 115-9) quotes the Wyoming constitutional builders on this matter, and they expressed their conception thereof in such terms as:

> "You make your appeal to a court one-third of whose members are dead against you—WHAT SHOW HAS A DEFEATED PARTY? WHAT SHOW HAS THAT MAN GOT BEFORE THAT COURT WITH ONE JUDGE ALREADY AGAINST HIM? WHAT KIND OF A COURT IS IT THAT IS CONSTITUTED THAT WAY? WHAT RIGHTS HAVE LITIGANTS? THE OTHER JUDGES DO NOT CARE TO REVERSE ONE OF THEIR ASSOCIATES—AND I SAY THEY WILL ENDEAVOR TO FIND OUT SOME WAY IN WHICH

THEY CAN AFFIRM THE DECISIONS OF THE COURT BELOW, AND THEY WILL OFTEN GO OUT OF THEIR WAY, AND NOT MEET THE POINT RAISED IN THE CASE AT ALL BUT WILL FLY OFF ON SOME TANGENT IN ORDER TO AFFIRM THE DECISION OF THE COURT BELOW.

"AND IF HE IS A MAN FIT TO FILL THE POSITION HE WILL NOT REVERSE HIMSELF.

"AND UNLESS THE MACHINERY AND POLICY OF THE STATE IS SUCH THAT IT WILL ADMINISTER JUSTICE TO ALL ALIKE, THEN I SAY TO YOU GENTLEMAN—LET US ADJOURN AND GO HOME.

"And I want to ask you further, is there a man, who if compelled to litigate for his rights, if he goes into court to litigate, and while in that court his rights are jeopardized—a decision is procured that is detrimental to his interests—a decision that is WRONG—a decision an independent supreme court might reverse, I want to ask you if a single man in that position cares to go to a supreme court WHERE HE WILL FIND THE GOVERNMENT JACK KNIVES IN HIM?"

The United States Supreme Court, *Craig* v. *Hecht* 263 U S 255, Taft, ex-president and Ex-Chief Justice of this court, pointed out the danger of such a concept.

The Supreme Court of N. D., *State ex Rel. Linde* v. *Robinson* 35 N. D. 410 declares;

"It is now universally recognized that a person cannot be a judge of his own case. Authority to preside in his own cause cannot be conferred by POSITIVE ENACTMENT. No matter how broad the grant of judicial power, this rule remains operative.

The rule applies in all cases where judicial functions are to be exercised. It is not left to the judge's discretion, or his sense of decency to decide whether he shall act or not."

The Supreme Court of Penn, in Ex Parte Steinman, 95 Penn St 220, 40 Am. Rep. 637 declares;

"The office of attorney is his property. He cannot be deprived of it except by 'due process of law'—To say that an attorney can only speak on this subject under liability to be *called to account*, or be deprived of his profession and livelihood, by the very judge or judges, whom he may consider it his duty to attack or expose is A POSITION TOO MONSTROUS TO BE ENTERTAINED FOR A MOMENT UNDER OUR PRESENT SYSTEM."

The Supreme Court of Minnesota in Re Hart, 104 Minn 88, 17 LRA (NS) makes the same identical declaration,

In the impeachment trial of Judge Peck, in the U S Senate for fining, imprisoning and disbarring attorney Lawless for criticising the Judge's opinion, Ex-president Buchanan, prosecutor says:

"Judgments are pronounced and the reasons for it go out to the world in the form of an opinion. Is not that opinion as fair a subject as any other paper? And will not, and ought not such opinions be freely criticised—as long as liberty shall endure in this country?

"And yet on principles which governed respondent's conduct, the Supreme Court possesses power to bring all editors throughout the Union before them, who—have dared impute errors in their opinions and punish them by fine, imprisonment at their pleasure.

"THE VERY ATTEMPT TO EXERCISE SUCH POWER WOULD CONVULSE THE PEOPLE OF THIS COUNTRY.

"If a judge be corrupt, or partial in his judicial conduct, or should perchance be a fool—a case which sometimes happens—it is not only the right, but the bounden duty of his fellow citizens to expose him, and his errors.

"If a man be notoriously incompetent for the judicial station he occupies, though it be no ground for impeachment—yet it is a state of things on which the force of public opinion may rightly be exercised for the purpose of driving him from the bench.

"If the power to punish libel does exist, a Judge may decide as he pleases without regard to either honesty or law, and then silence the press in relation to his con-

duct by denouncing fine or imprisonment against all those who dare expose his errors. The GREATER THE TRUTH THE GREATER THE LIBEL. A weak Judge hates criticism. A weak Judge when his capacity is called in question would always be the most cruel."

GROUP 4

9. Are either or all of the following statutory provisions of the Wyo. R. S. 1931, to-wit: Sec. 9-113, prescribing the attorney's oath—"that he will faithfully, honestly, and to the best of his abilities perform the duties of attorney and counsellor-at-law" relied upon by the court (See opinion—R. 136—155 Pac. 2nd page 289); and sec. 9-114 under which this action is brought conferring jurisdiction on the court to disbar or suspend an attorney for—"the wilful violation of any of the duties of attorney or counsellor" (R. 133) (Quoted page 287 of the opinion); or sec. 9-116, as amended by Ch. 112, Wyo. S. L. 1937, (Quoted page 287 of the opinion) (R. 132) providing a trial by a three-judge panel, and without a jury; or the rules of the Wyoming Supreme Court, as set forth on page 291 of the opinion, a restriction or limitation, or are they inconsistent with and repugnant to the natural attributes and inherent prerogatives of petitioner's American citizenship, and to his constitutional guaranty of Freedom of Speech under the First Amendment to the Constitution of the United States; and to the same Freedom of Speech, with a jury trial and TRUTH as justification under Sec. 20, Art. I of the Wyoming constitution; and to equal justice and due process of law under the Fourteenth Amendment to the Constitution of the United States, and therefore void as unconstitutional? And further is the judgment of the Wyoming Supreme Court construing the campaign letter as a violation of petitioner's oath, and of his duties as attorney, and his denial of a jury trial, likewise void, either because said

statutory provisions and rules of the court are void and unconstitutional, or because the Wyoming Supreme Court wrongly construed those statutes and rules, and made a wrong and unconstitutional application of those statutes and rules to the petitioner's campaign letter?

Petitioner contends that the Wyoming Supreme Court wrongfully construed and unconstitutionally applied said statutes and rules to the facts herein, rendering the judgment void. The contention is predicated on the rule stated in *N. C. & L. R. Co.* v. *Walters*, 294 U. S. 405, 415, 79 L. Ed. 949, 955:

> "A statute valid as to one set of facts may be invalid as to another."

Accordingly, the said statutes and rules might be valid if the action had to do with conduct of an attorney in his professional conduct, as some default in his duties to his client, or some act obstructing justice in a pending case, etc. However the conduct herein set forth in the complaint is not the act of petitioner acting as an attorney, but in his private capacity as citizen, as candidate for public office, and in the exercise of his natural attributes and inherent prerogatives as American citizen, and in his constitutional guaranty of Freedom of Speech. The unconstitutional misconstruction and application by the court of the campaign letter with reference to those statutes and rules is in conflict with, repugnant to petitioner's constitutional Freedom of Speech and to due process of law, and therefore void.

The Supreme Court of Minn. *Re Hart*, 104 Minn. 88, 17 LRA(NS) 585; and the Supreme Court of Pennsylvania, *Ex Parte Steinman*, 95 Penn. St. 220, 40 Am. Rep. 637; and Wisconsin Sup. Ct. in *State Ex Rel.* v. *Circuit Court*, 97 Wis. 1, 65 ASR 90; and the Supreme Court of Oklahoma in *Owens* v. *Clark*, 6 Pac. 2nd 761, where a like action was libel;

and in *Ex Parte Owens*, 258 Pac. 802; the Supreme Court of Kansas in *Re Pryor*, 18 Kan. 72, 26 Am. Rep. 747; the Supreme Court of Texas in *Jackson* v. *State*, 21 Tex. 668; the Supreme Court of Oregon in *State* v. *Kaiser*, 20 Or. 50, 23 Pac. 964; the Supreme Court of Washington in *State* v. *Tugwell*, 19 Wash. 256, 52 Pac. 1062; the Supreme Court of Rhode Island in *Re Troy*, 111 At. 723; the Supreme Court of the United States in *Paterson* v. *Colorado*, 205 U. S. 454; and in *Craig* v. *Hecht*, 263 U. S. 255.

The Reporter's Note to *Ex Parte Steinman*, 40 Am. Rep. 641 cites also *Ex Parte* 2 Dow P. R. 110; and also *Re Walace* in Supreme Court of Nova Scotia, L. R. 1 P. C. 283 to the point. They all point out the difference between attorney's profession and private conduct.

To cite the many other cases is only cumulative.

Petitioner further contends that if the Wyoming legislature did intend such statutes and rules as a restriction and limitation on Freedom of Speech, such as this campaign letter, then the Wyoming court decision is void because the statutes themselves and rules are void.

The right of petitioner to practice law is his property. Some courts, probably through unsound reasoning, have concluded the attorney's right to practice law standing alone is not protected by the due process of law of the 14th Amendment to the U. S. Constitution. But that is not the situation, nor the question at issue herein.

The question here is—has the Wyoming Supreme Court deprived petitioner of his Freedom of Speech under the guaranty of the First Amendment to the U. S. Constitution, and under Sec. 20, Art. I of the Wyoming constitution, along with his constitutional right thereunder to a jury trial and to justify by TRUTH, rights that are unquestionably protected by both constitutions? And further by a denial of those unquestioned constitutional rights, further vio-

lated the Due Process of Law clause of the 14th Amendment to the U. S. Constitution? And have they accomplished this unconstitutional end by wrongly twisting and misconstruing the attorneys oath, or the duties of an attorney, and by denying this petitioner the right to exercise the natural attributes and inherent prerogatives of American citizenship? And they accomplish this end by wrongly holding that an attorney surrenders essential attributes and prerogatives of American citizenship by reason of his status as attorney, thus making him an inferior or dwarf citizen. In other words, the Wyoming Supreme Court by its judgment herein has decreed that petitioner cannot be a true American citizen, and exercise the natural attributes and inherent prerogatives of such honorable citizenship and at the same time be an attorney.

This court in *West Va. State Bd. of Ed.* v. *Barnette*, 319 U. S. 624, 87 L. Ed. 1171, clearly expresses the distinction saying:

> "The 14th Amendment, as now applied to States, protects the citizen against the State itself, and all its creatures,—Boards of Education not excepted.
>
> It is important to distinguish between the due process of law clause of the 14th Amendment, as an instrument for transmitting the principles of the First Amendment, and those cases in which it is applied for its own sake.
>
> The test of legislation which collides with the 14th Amendment because it also collides with the principles of the First Amendment is much more definite than the test when only the 14th Amendment is involved.
>
> Much of the vagueness of the 14th Amendment of the due process of law clause disappears when the specific prohibitions of the First Amendment become Standard.
>
> The right of the State to regulate for example, a public utility, may well include so far as the due

process test is concerned—power to impose all restrictions which the legislature may have a rational basis for adopting.

But Freedom of Speech and of the press, or assembly, and of worship, may not be infringed on such slender grounds.

Those who begin coercive elimination of dissent, soon find themselves the exterminating dissenters. Compulsory unification of opinion achieves only the anonymity of the graveyard.

It seems trite, but necessary to say that the First Amendment was designed to avoid these ends by avoiding these beginnings. We set up government by consent and the Bill of Rights denies those in power any legal opportunity to coerce its consent.

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion,—OR OTHER MATTER OF OPINION—or force citizens to confess by word, or act, their faith therein.

Love of country must spring from willing hearts, and free minds, inspired by a fair administration of wise laws, enacted by the people's representatives, within the bounds of express constitutional prohibition. These laws must be consistent with the First Amendment and permit the widest toleration of conflicting viewpoints consistent with a society of free men."

Petitioner contends the record herein discloses that his legal criticisms were supported by the unanimous decisions of all the courts of the land. That every statement in the letter was as true as legal authorities, as rules of legal reasoning, as facts could make them. And the effect of the decision herein is to penalize his right to think, his right to reason intelligently, and to make him accept the erroneous action of the Wyoming court in 50 Wyo. 277, and give up his property, and then as a candidate for public office wherein those matters were of public concern in the election

of a judge, surrender his opinion and his rights to place his qualifications compared with the qualification of his opposing chief justice candidate before the voters. And for having exercised his civil and political liberty therein, to be dishonored, penalized and deprived of his means of livelihood, with the command to never dare do so again. Such court action is void.

GROUP 5

10. Is the right of petitioner to be secure in and to enjoy the FOUR FREEDOMS, which are now recognized as the natural attribute and inherent prerogative of his American citizenship endangered and violated by the action and judgment itself, rendering the judgment void? And further does the judgment itself as a precedent, to determine and control petitioner's future conduct, and especially the open threat of future punishment for attempted enjoyment of those freedoms expressed in the concluding lines of the opinion itself, towit:

> "respondent should be suspended from practicing in this state, and that is modified to a period of six months, WHICH WE FEEL IS AMPLE PUNISHMENT AND THAT HE WILL NOT AGAIN BE GUILTY OF SUCH CONDUCT",

so endanger and threaten petitioner's security and safety in the future exercise of those freedoms as to render said judgment void as opposed to true Americanism, requiring this Court to vacate said judgment?

Petitioner contends the import of this judgment, and open threat of future punishment for the further and future exercise of his freedom of speech, is that he will be penalized more drastically for the second offense as viewed by the court, and that his Freedom from Fear, fear of molestation and punishment for the exercise of these constitutional rights, and Freedom from Want, being deprived

of his profession and livelihood, are utterly destroyed. Further that his honor, and his reputation, his standing and character as a good citizen are blasted by the condemnation of the judgment, which call for redemption by this Court through the vacation of the judgment.

The hardships endured by being deprived of his livelihood are small indeed to the humiliation and dishonor to standing, name, reputation and character.

The honorable profession to which Petitioner belongs is entitled to be recognized as one entitling the membership to be freed from the condemnation of a restricted citizenship shorn of the natural attributes and inherent prerogatives of other classes even the disloyal. Their profession is also their property and whatever the rule may have been in the past it should be elevated to the protection of the 14th Amendment to the federal constitution, for not always is the question of other constitutional guaranties, such as freedom of speech, involved as in this case.

Reasons Relied On for Allowance of the Writ

1. The matters involved are of national importance. They present a challenge to the virility and even the very existence of true Americanism, and question whether or not the exercise of the natural attributes and inherent prerogatives of American citizenship is a virtue or a crime.

2. The questions presented involve the correct construction of Freedom of Speech under the First Amendment to the Constitution of the United States, and also under Sec. 20, Art. I, of the Wyoming Constitution, and to Due Process of Law under the 14th Amendment of the Federal Constitution, the final determination of which is a matter of jurisdiction for this Court.

3. The Government is enjoined with the duty to protect petitioner, along with every other citizen in the enjoyment

of such constitutional rights, natural attributes and inherent prerogatives of national citizenship, a duty recognized and stated in *U. S.* v. *Cruikshank,* 92 U. S. 542, Syl. 9, which states:

> "Every Republican government is in duty bound to protect all its citizens in the enjoyment of an equality of rights",

referring to these same constitutional rights. And the duty is to curb any impairment, or abridgment of those rights by the State or any governmental agency whatsoever, including such courts as deny those rights.

4. The judgment of the Wyoming court herein denies petitioner the equality of those constitutional rights, and its procedure in denying those rights, and in denying a jury trial, and disregarding TRUTH as justification, and in compelling petitioner to submit his rights, case, and welfare to the very identical judge who sat as a member of the Wyoming Supreme Court in 50 Wyo. 277, and rendered the opinion criticised, so offends and violates the American concept of justice and the right to a fair and impartial trial as to invoke the jurisdiction of this Court to set aside the Wyoming Judgment, and to protect petitioner in the enjoyment of those constitutional rights in harmony with the prior decisions of this Court construing those rights and privileges. (See cases cited *supra,* pp. 10 et seq.)

Prayer

WHEREFORE, your petitioner respectfully prays that a writ of certiorari issue under the seal of this Court, directed to the Supreme Court of the State of Wyoming, commanding said court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Supreme Court of Wyoming, and the

stipulated record of the parties therein for this Court, in said cause therein numbered and entitled on its docket, No. 2299, *The State Board of Law Examiners, Complainant*, v. *John J. Spriggs, respondent*, to the end that this cause may be reviewed and determined by this court, as provided by the statutes of the United States; and that the judgment herein of said Supreme Court of Wyoming be reversed by this Court, and that Petitioner may have such other and further relief as to this Court may seem just and proper in the premises.

JOHN J. SPRIGGS,
Petitioner.